REMARKS

Claim 23 is amended. Claims 1 and 3-39 are currently pending in the application.

The following remarks are response to the Office action dated January 4, 2005.

Response to Rejections Under 35 U.S.C. §103

Claim 1

Claim 1 is directed to an absorbent article comprising:

an outer cover adapted to stretch upon application of a load by a first amount;

a liquid and gas permeable bodyside liner defining a bodyfacing surface and being generally superposed and coextensive with the outer cover, the bodyside liner being adapted to stretch upon application of the load by a second amount;

an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and

said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body, the bodyside liner being relatively more resilient when stretched than the outer cover.

Claim 1 is submitted to be non-obvious and patentable over the references of record, and in particular U.S. Patent No. 6,471,682 B1 (Kashiwagi) in combination with U.S Patent No. 4,846,825 (Enloe et al.) as cited in the Office action, in that whether considered alone or in combination the references fail to disclose or suggest an absorbent article having a bodyside liner adapted to stretch a second amount upon application of a load,

and an outer cover adapted to stretch a first amount greater than the second amount (e.g., of the liner) upon application of the load, and wherein when stretched the liner is more resilient than the outer cover.

Kashiwagi discloses an absorbent article comprising a liquid-permeable sheet 2a adhered to an absorbent core 2b with an olefin-based or rubber-based hot melt adhesive (thus making an absorbent member 2), a liquid-impermeable support sheet 3a (a component of a support body 3) and a second absorbent core 3b. The liquid-permeable sheet 2a and absorbent core 2b are supported by three elastic members 4, 5 and 6. The elastic members 4, 5 and 6 extend longitudinally from the end edge portions of the absorbing member 2 and are fixed to a front portion 3B and a rear portion 3C of the support body 3.

In use, the front portion 3B and rear portion 3C are expanded in the longitudinal direction upon opening the article, thereby tensioning the elastic members 4, 5 and 6. As a result, the liquid absorbing member 2 "floats" (i.e., be spaced apart from the support member 3) above the support member and causes the absorbing member, including the liquid-permeable sheet 2a, to fold or curve (see, e.g., Fig. 4B of Kashiwagi). This allows the liquid absorbing member 2 to readily fit the private part of the wearer and to move freely over the support body 3.

Applicant respectfully disagrees with the Office's assertion that the liquid permeable sheet 2a is adapted to stretch upon application of a load. Kashiwagi teaches that the liquid-permeable sheet is "a nonwoven fabric made of PE fibers, PP fibers, PET fibers . . . or their composite fibers, such as a spun-bonded nonwoven fabric and a spun-laced nonwoven fabric." Column 4, lines 1-5. Nowhere does Kashwagi disclose, nor is it inherent from Kashiwagi's disclosure, that the liquid permeable sheet 2a is stretchable upon application of a load.

Moreover, the liquid permeable sheet 2a is disclosed as being adhered to absorbent core 2b (constructed of a mixture of pulp and SAP) with an olefin-based or rubber based hot melt adhesive (thus making the liquid absorbing member 2). Column 4, lines 6-8. Kashiwagi lacks any disclosure that the absorbent core 2b is stretchable. Accordingly, adhering the liquid permeable sheet 2a to the non-stretchable absorbent core 2b further renders the liquid permeable sheet 2a non-stretchable upon application of a load.

That the liquid absorbing member 2 (and hence the sheet 2a) is supported by the elastic strands 4, 5 and 6) does not render the sheet 2a stretchable. Even when the elastic strands are tensioned, the liquid permeable sheet 2a itself is incapable of being stretched as discussed above. Only if the elastic strands are adhered to the sheet 2a/core 2b while the strands are in an extended condition (e.g., so that the sheet 2a is gathered prior to application of a load to the sheet) could the sheet be stretchable. However, there is clearly no disclosure or even a suggestion that the elastic strands 4, 5 and 6 are adhered to the sheet 2a/core 2b in such a manner.

Accordingly, Kashiwagi fails to show or suggest 1) a liquid permeable liner adapted to stretch upon application of a load by a second amount. Moreover, as conceded in the Office action, Kashiwagi also fails to disclose 2) an outer cover adapted to stretch upon application of the load by a first amount. Kashiwagi must therefore also fail to disclose 3) that the first amount of stretch of the outer cover is greater than the second amount of the stretch of the bodyside liner, and 4) that the bodyside liner is relatively more resilient when stretched than the outer cover.

Enloe et al. is relied upon by the Office as disclosing an article having a stretchable outer cover. Applicants note that

at column 8, lines 28-63, Enloe et al. disclose an elastomeric outer cover 11 having an absorbent insert 12 attached and integrated thereinto. While the Office action does not characterize any other components of Enloe et al., it is clear that Enloe et al. fails to disclose 1) a liquid permeable liner adapted to stretch upon application of a load by a second amount. Accordingly, Enloe et al. must also fail to disclose or suggest 2) that the first amount of stretch of the outer cover is greater than a second amount of the stretch of the bodyside liner (because the liner does not stretch), and 3) that the bodyside liner is relatively more resilient when stretched than the outer cover.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." M.P.E.P. § 2143.03 citing In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Accepting for the sake of argument the Office's characterization of Kashiwagi as teaching a stretchable liner (and as noted above applicants disagree with such a characterization), both Kashiwagi and Enloe et al. fail to disclose that the stretchable outer cover stretches an amount greater than a stretchable liner upon application of a load and that the stretchable liner is relatively more resilient when stretched than the outer cover. Thus a combination of the references also fails to show or suggest these features of claim 1.

The Office's position is that it would have been obvious to one skilled in the art to modify the outer cover of Kashiwagi with an elastomeric outer cover as taught by Enloe et al. Such a position, however, completely ignores the recitations of claim 1 that the outer cover stretches a first amount greater than a second amount of stretch of the liner upon application of the load, and that the liner when stretched is relatively more

resilient than the outer cover. In other words, even if one skilled in the art would be motivated by Enloe to modify the outer cover of Kashiwagi to be elastomeric, where is the motivation to modify the outer cover of Kashiwagi to be more stretchable than the liner of Kashiwagi, or to construct the liner to be relatively more resilient when stretched than the modified outer cover? Applicants submit that such motivation is lacking from either of the cited references.

For example, Kashiwagi is completely silent as to the amount of stretchability of the elastic strands 4, 5 and 6. Enloe et al. disclose that the outer cover may be stretchable in the range of 20 percent to 200 percent. This is a broad range of stretchability. And without knowing the stretchability of the elastic strands 4, 5 and 6 of Kashiwagi, it cannot be said that replacing the outer cover of Kashiwagi with the elastomeric outer cover of Enloe et al. would explicity or inherently result in the outer cover being more stretchable upon application of the load than the liner of Kashiwagi, or that that liner of Kashiwagi would be more resilient when stretched than the outer cover.

Rather, it is submitted that the only motivation to provide the liner and outer cover stretch and resiliency differential recited in claim 1 is improperly gleaned from the present disclosure.

The other references of record similarly fail to show or suggest all of the elements of claim 1.

For these reasons, claim 1 is submitted to be non-obvious and patentable over the references of record.

Claims 3-22 depend either directly or indirectly from claim 1 and are submitted to be patentable over the references of record for the same reasons as claim 1.

Claim 23

Claim 23 is directed to an absorbent garment for capturing human waste when worn. The garment comprises:

a liquid impermeable outer cover adapted to stretch upon application of a load by a first amount;

a liquid and gas permeable bodyside liner generally superposed and coextensive with the outer cover, the bodyside liner being adapted to stretch upon application of the load by a second amount, the bodyside liner comprising a stretchable sheet of liquid and gas permeable material defining a bodyfacing surface, and plural cords of resilient elastic material on a side of the sheet opposite the bodyfacing surface, the cords applying a resilient force in opposition to stretching of the sheet;

an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and

said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body.

Claim 23 is submitted to be non-obvious and patentable over the references of record, and in particular Kashiwagi in combination with Enloe et al., for reasons similar to those discussed above in connection with claim 1. In particular, the cited references fail to disclose the combination of an outer cover adapted to stretch upon application of a load by a first amount, an bodyside liner adapted to stretch upon application of the load by a second amount, the first amount of stretch of the outer cover being greater than the second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body.

Moreover, claim 23 is amended herein to clarify that the bodyside liner is comprised of a stretchable sheet of material and plural cords of resilient elastic material. The sheet 2a disclosed by Kashiwagi, while supported by elastic strands 4, 5 and 6, is clearly not stretchable as recited in amended claim 23. Enloe et al. also fail to disclose the bodyside liner recited in claim 23.

For these additional reasons, amended claim 23 is further submitted to be non-obvious and patentable over the references of record.

Claims 24-39 depend either directly or indirectly from claim 23 and are submitted to be patentable for the same reasons as claim 23.

Conclusion

In view of the foregoing, favorable consideration and allowance of claims 1 and 3-39 as now presented is respectfully requested.

Respectfully submitted,

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